

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13350, of BNA Washington, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 4502.31 to use the second, third and fourth floors of the subject premises for the George Washington University Health Clinic in a C-R District at the premises 1229 - 25th Street, N.W., (Square 24, Lot 102).

HEARING DATE: October 15, 1980

DECISION DATE: November 5, 1980

FINDINGS OF FACT:

1. At the public hearing, Harriett B. Hubbard requested that the Board not hear the matter on the grounds that the counsel for the applicant, Wilkes and Artis, was in violation of the disciplinary rules of the American Bar Association regarding conflict of interest. As grounds for her motion, Mrs. Hubbard cited the evidence and argument introduced in proceedings which are before the Board in two other cases, No. 12531 and 13349.

2. The counsel for the applicant opposed the motion and argued that Mrs. Hubbard had made no proffer as to how the subject application was the same matter as other proceedings which members of the firm of Wilkes and Artis had been involved in when those members had been employed with the Government of the District of Columbia.

3. Disciplinary Rule 9-101(B) of the American Bar Association states that a "lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee."

4. The request to disqualify Wilkes and Artis did not set forth any established facts or basis to support the granting of the request.

5. The pending application for a special exception is not the same matter as either of the prior actions which members of the Wilkes and Artis firm participated in as public employees; that is, the creation, adoption and mapping of the CR District and the resulting litigation over certain height restrictions of that District. The special exception is being sought under the requirements of Sub-section 8207.2 and Paragraph 4502.31. There is no direct connection between the legislative proceedings of the Zoning Commission to adopt the District and the specific issues of fact presented by the special exception application. There are no facts or inside information arising from the C-R rezoning on height limitation that would be pertinent to the granting or denial of this application.

6. The subject property is located in a C-R District on the west side of 25th Street between M and N Streets, N.W.

7. The site is improved with a six story office building which was constructed in accordance with the requirements of the C-M-2 District applicable to the property before the C-R zone was adopted.

8. The George Washington University Health Plan, Inc. (hereinafter the Plan) is presently located on the second and third floors of the subject site pursuant to Board approval in Application No. 11952.

9. The Plan has experienced steady growth since the enactment of P.L. 93-222, the Health Maintenance Organization Act of 1973. Because of the increased enrollment of the Plan, the applicant is seeking a special exception to allow additional space on the fourth floor of the subject building to be used as a clinic.

10. Permanent space for this facility will be provided at a location within the area covered by George Washington University's approved master plan. Although there is presently a lack of funding for the permanent facility, the University expects to complete such facility within five years.

11. The Plan is a prepaid group practice or Health Maintenance Organization serving residents of the Metropolitan Washington area. The Plan is a non-profit corporation organized in May 1972 and existing under the laws of the District of Columbia. The Plan has engaged in the development of an experimental health delivery system serving patients and functioning as a site for educational program development. Under the Plan, comprehensive health services are provided to the enrolled patients for a fixed monthly premium during the contract period. The Plan has been certified by the Federal Government as eligible to provide services to Federal and District employees participating in the Health Benefits Program.

12. Thirty-eight off-street parking spaces are provided within the building for the use of doctors and staff. No additional parking spaces are required under the Zoning Regulations for the establishment of new clinic space on the fourth floor of the existing office building. There are also three commercial parking lots in the immediate vicinity.

13. The Plan now operates Monday, Tuesday, Thursday and Friday between the hours of 8:30 a.m. and 5:00 p.m. and 12 p.m. to 8:00 p.m. on Wednesdays, serving 250 patients daily. It is anticipated that the hours will be expanded at a future date to 8:00 a.m. to 6:00 p.m. Monday through Friday to include twelve additional hours of nighttime clinic operations as well as possibly 9:00 a.m. to 4:00 p.m. Saturday. The Plan expects to serve a maximum of approximately 320 patients daily over the next five year period.

14. The subject site is located in a commercial neighborhood, including the U.S. News and World Report parking uses. The subject square contains only two residential structures.

15. The applicant's traffic witness established that the proposed use will not become objectionable because of noise, traffic, or parking. The anticipated parking demand for the clinic is likely to be less than the present demand for all-day parking for office workers.

16. The District of Columbia Department of Human Services advised the applicant that "the project is not subject to the requirements of the D.C. Certificate of Need Act and no approval is required from the agency for the project." The Department further noted that:

"The operation of the HMO facility is consistent with the D.C. State Health Plan and the national policy of encouraging development of HMOs. Growth in the Plan's enrollment would clearly justify the need for additional space. It would further seem appropriate to us to expand the current facility rather than to create a separate facility elsewhere which would lead to higher costs because of necessary duplicative staffing and equipment."

17. The Executive Director of the Plan testified as to the services currently provided by the Plan, the expansion of services already provided and the future demands for use of the Plan.

18. Based on the testimony of the Executive Director, and the letter from the Department of Human Services, the Board finds that there is a demonstrated need for the clinic.

19. As required by the regulations, the application was referred to the Office of Planning and Development on July 30, 1980. No report from the OPD was received.

20. The applicant submitted plans, marked as Exhibit No. 20 of the record, showing the location of all improvements in the clinic.

21. Advisory Neighborhood Commission - 2A offered no statement on this application.

22. Several letters were submitted in support of the continuation and proposed expansion of the Plan facilities at the subject site.

23. Testimony in opposition was submitted by a citizen representing the Dupont Circle Citizens Association on the basis that there are already sufficient medical facilities in the area, and the Association opposes any increase in such facilities. The Association further argued that the area should contain more residential uses.

24. As to the arguments raised in opposition, the Board finds that the applicant is seeking a special exception under Sub-section 8207.2 and Paragraph 4502.31. Those applicable regulations do not require the Board to take into account whether there are other medical facilities in the immediate area or whether the property can be used for residential purposes.

CONCLUSIONS OF LAW AND OPINION:

As set forth in Findings of Fact 1 through 5, a question was raised as to whether the law firm of Wilkes and Artis should be disqualified from representing the applicant on the grounds of conflict of interest. The Board concludes that no prima facie case of a conflict has been made and that in fact no documented material facts were introduced to support the request at all. The Board further concludes that there is no "same matter" connection between the case and any other prior matters which members of the Wilkes and Artis firm participated in as public officials. The Board concludes that there is no basis for disqualification on the grounds of conflict of interest, and the request is therefore denied.

The Board notes that an allegation of conflict of interest is not to be taken lightly. The Board will give careful attention to such allegations, but cautions persons making such allegations that they must support a claim of conflict of interest with specific facts and arguments. As set forth in various court decisions, the mere allegation of conflict of interest or unlawful conduct is not a sufficient basis to grant such a request.


Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception. In order to be granted such an exception, the applicant must demonstrate that it has complied with the requirements of Paragraph 4502.31 and Sub-section 8207.2 of the Zoning Regulations. The Board concludes that the applicant has so complied.

The Board concludes that the proposed continuance and expansion of the health care facility on the subject site is not likely to become objectionable to neighboring property owners because of noise, traffic, or other objectionable conditions. The application, as shown by the plans submitted, will be in harmony with the general purpose and intent of the Zoning Regulations and Maps. The applicant has shown that there is a demonstrated need for the facility at this site and that it is in harmony with the general purpose and intent of the Zoning Regulations.

The Board concludes that the arguments raised in opposition are not relevant to the subject application. The Board further concludes that the special exception can be granted as in harmony with the general purpose and intent of the use of neighboring property in accordance with said regulations and maps. The applicant is only required to demonstrate that he has complied with the requirements of the regulations, and the Board has concluded above that the applicant so complied. It is therefore ORDERED that the application is GRANTED.

VOTE: 5-0 (Charles R. Norris, Walter B. Lewis, Connie Fortune, Douglas J. Patton and William F. McIntosh to GRANT).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: 

STEVEN E. SHER
Executive Director

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FINAL DATE OF ORDER: 22 DEC 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.